

OCA FILE

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17 March 1988  
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## MEMORANDUM FOR THE RECORD

SUBJECT: Hearing on Antiterrorism and Arms Export Amendments  
Act, H.R. 3651

1. On 17 March 1988, three subcommittees of the House Committee on Foreign Affairs held a joint, open hearing on the above-captioned bill. The three subcommittees were the Subcommittee on Arms Control, International Security and Science; the Subcommittee on International Economic Policy and Trade; and the Subcommittee on International Operations. Members appearing were Representatives Berman, Fascell, Broomfield, Solomon, Bereuter, Hyde, and Lantos, although all but Berman left shortly after delivering brief remarks. Testifying were Paul Bremer and Allen Holmes of the Department of State, with backup witnesses from the Departments of Defense and Commerce as well as the Agency. [redacted] Associate General Counsel/DC was the Agency's backup witness. Also attending were [redacted]/OCA and myself. Attached are the opening statements and other materials handed out at the hearing.

2. In his opening remarks, Rep. Broomfield questioned the ability of the bill to combat terrorism. He was interested to hear the Administration's view and questioned whether the bill can be amended. He noted that industry is also concerned because of the potential of foreign retaliation against U.S. firms as a result of the bill's coverage of foreign subsidiaries. He hopes Rep. Berman is receptive to amendments.

3. Rep. Berman said the bill reaffirms the prohibition on exports to terrorist states. For the most part, it is not new law, but restated law. It is intended to close loopholes and ensure uniform standards. It does not eliminate the President's discretion. He noted that he has agreed to make some changes. These address the question of the bill's extraterritorial reach, modifying the sanctuary test; the State Department would have discretion to put a country on the terrorist list. The "reason to believe" standard has been changed to a "reason to know" standard. The presumption of denial regarding the legality of licenses has been abandoned. Section 7 has also been changed.

4. Rep. Solomon said that he is not sure this legislation is the way to go. He commends Rep. Berman for removing solely from the Department of Commerce jurisdiction over exports of national security concern.

5. Rep. Hyde said he is "not indifferent" to the problems with the first draft. The staff is still working on it and he wants to help.

6. Rep. Berman said that the bill recognizes the role of covert operations in arms exports. The Administration position regarding Iran-contra is not that the laws were fine, but the people violated the laws. Rather, the position is that perhaps an action was not permissible under one law, but was under another. He said he would look at the matter of the bill limiting transfers to non-terrorist nations. He wants a sensible, bipartisan bill.

7. In speaking with the staff after the hearing, we learned that the bill will be marked up in two weeks. The staff indicated their willingness to work with the Agency in addressing its concerns. However, they also indicated that the Agency must "pick its poison" in terms of either notifying the House Foreign Affairs Committee or the House Intelligence Committee of munitions transfers it makes, even routine transfers to assets in non-terrorist countries.

Legislation Affairs  
Office of Congressional Affairs

Attachments

OCA [redacted] (17 March 1988)

Distribution:

Original - Subject File: Terrorism

- 1 - [redacted]
- 1 - [redacted]
- 1 - [redacted]
- 1 - [redacted]
- 1 - D/OCA
- 1 - OCA Registry
- 1 - [redacted] Signer
- 1 - OCA Read

CONGRESSMAN

TOWARD BERMAN

## NEWS RELEASE

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March 17, 1988

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### FOREIGN AFFAIRS COMMITTEE HOLDS HEARING ON BEEFED-UP BAN ON ARMS SALES TO TERRORIST NATIONS

WASHINGTON -- The House Foreign Affairs Committee today heard testimony on legislation to bar arms transfers to nations officially found to support international terrorism.

The legislation was characterized by its author, Rep. Howard Berman (D-CA), as "a clean-up after the fiasco that dirtied the reputation of the United States with the embarrassing and unwise arms-for-hostages policy."

The bill, H.R. 3651, closes existing and potential loopholes in present arms export laws. It amends several key statutes to ensure that uniform standards regulate arms exports to terrorist nations and to strengthen notification to the Congress of all arms exports. H.R. 3651 remedies many of the deficiencies in current law highlighted by the report of the Iran-contra Committees.

Original cosponsors of this important bipartisan bill are Rep. Dante Fascell, Chairman of the House Foreign Affairs Committee and Vice-Chairman of the House Iran-contra Select Committee; Rep. Lee Hamilton, Chairman of the House Iran-contra Select Committee; and Rep. Henry Hyde, Republican Member of the Select Committee and Member of the Foreign Affairs Committee. Since its introduction, 50 additional Members of the House have cosponsored the legislation.

### INFORMATION MEMORANDUM

H.R. 3651  
Antiterrorism and Arms Export Amendments Act

March 17, 1988

During the last year a clear need has developed to reaffirm two fundamental principles of American foreign policy embodied in statute law: 1) the prohibition on the export of military weapons to states which support international terrorism, and 2) the obligation of the executive branch to keep Congress informed of both overt and covert exports of military weapons to foreign governments. While these principles are clear, and while they have been publicly supported by the Reagan Administration and Congress, the implementation of them pursuant to the law remains in doubt.

Rep. Howard Berman has authored the Antiterrorism and Arms Export Amendments Act (the "Act") to reaffirm this country's prohibition on exports of military weapons to terrorist states and to require more detailed and periodic reporting by the executive of arms exports. The Act, introduced on November 18, 1987, with the co-sponsorship of Reps. Dante Fascell, Lee Hamilton, and Henry Hyde, now has more than 50 co-sponsors. It makes little substantive change in the law. The Act is largely a restatement of existing law. Its intent is to close potential loopholes and revise certain provisions to ensure that uniform standards are present in the law. The Act also requires the executive to reform the reporting requirements of the National Security Council or the State, Defense or Defense Departments. The Act also requires the executive to report to Congress on the status of arms exports to states which support international terrorism.

The Act would amend the Arms Export Control Act, the Foreign Assistance Act of 1961, the Export Administration Act and the Hostage Act of 1868. The legislation includes the following major provisions:

--Section 40 of the Arms Export Control Act, which prohibits exports of arms to terrorist states, would be significantly reinforced. Prohibited transactions are explained in detail, both with respect to U.S. Government activities and private transactions. The President could waive the prohibitions for specific transactions, but only with prior, detailed reporting to Congress (on a classified basis if necessary). A clear line is drawn between overt transfers to terrorist states and arms transfers which are part of approved intelligence activities. The amended Section 40 also would have criminal penalties similar to those found in the Export Administration Act.

--Section 6(j) of the Export Administration Act, which regulates the export of goods and technology of military or "terrorist" value to terrorist states, would be amended to 1)remove the current \$1,000,000 annual threshold amount under which the executive currently does not have to report to Congress exports of such goods and technology to terrorist states, and 2)require validated licenses for all such exports to terrorist states and 30-day prior notification to Congress of the proposed issuance of a validated license.

--Section 620A of the Foreign Assistance Act of 1961, the "antiterrorism" section of that Act, would be amended to conform it with other changes in the law, particularly the revision of Section 40 of the Arms Export Control Act.

--Sections 3(a) and 38 of the Arms Export Control Act and Section 505 of the Foreign Assistance Act of 1961 would be amended to require that before the President consents to the transfer of military weapons from a recipient country to a third country, he must give prior notification to Congress.

--Section 36(a) of the Arms Export Control Act would be amended to require quarterly reports (classified if necessary) from the President of inter-agency transfers of military weapons which will not ultimately be disposed of within the United States.

--The Hostage Act of 1868 would be amended simply to clarify that the President's authority to take action to release hostages cannot be carried out in a manner which would otherwise be prohibited by law.

# # #

**STATEMENT OF REP. HOWARD BERMAN**

**before a joint meeting of the Subcommittees on  
Arms Control, International Security and Science  
International Economic Policy and Trade  
International Operations  
of the  
Committee on Foreign Affairs**

**March 17, 1988**

During the past year we have all been reminded of two fundamental principles of American foreign policy. They have been traditionally promoted by both the Administration and Congress. These principles are already embodied in statutory law:

First, it is illegal to export munitions to states which support international terrorism, as determined by the Secretary of State.

Second, Congress must be kept informed of both overt and covert exports of munitions to other countries.

The investigations into the Iran-contra affair by the Tower Commission and the Senate and House select committees in 1987 uncovered abuse of these two principles by high-ranking Administration officials and private United States citizens. Administration lawyers issued one legal opinion after another (some oral, others written) justifying actions which common-sense readings of the law found highly suspect. Somehow the law was construed (or ignored) by zealous officials and (I am sure) well-

intentioned patriots to permit what years of bipartisan efforts had determined was contrary to the foreign policy interests of this country.

I should know. In the summer of 1986 my colleague, Henry Hyde, and I authored an amendment to the Arms Export Control Act. It read very simply: "[I]tems on the United States Munitions List may not be exported to any country which the Secretary of State has determined...has repeatedly provided support for acts of international terrorism." The President may waive this prohibition. But he must determine that the export is important to the national interests of the United States. And he must notify Congress. Henry and I pushed this amendment as a logical extension of the Administration's antiterrorism policy, particularly as it was reflected in Operation Staunch against Iran.

The Berman-Hyde amendment became the law of this land, with broad bipartisan support, on August 26, 1986. Two months later the Administration shipped 500 TOW missiles into Iran. The President did not inform Congress. Ensuing months produced conflicting interpretations of our amendment and of other prohibitions in the U.S. Code.

The considerable debate that erupted during the Iran-contra investigations over the meaning and intent of arms export and antiterrorism laws led me to re-examine some of the laws. I looked not only at the Berman-Hyde amendment but at other provisions in three statutes which attempt to regulate exports of arms and certain goods and technology to terrorist states.

What I found was law which over the years has become riddled with overlapping standards that can lead to confusion and misuse. There is no single standard in the law for:

- (1) determining whether a state supports international terrorism;
- (2) identifying which U.S. official should make that determination;
- (3) identifying which arms are subject to restrictions;
- (4) identifying the criteria that empower the President to waive statutory restrictions; and
- (5) adequately informing Congress of arms exports, including covert exports.

It may well be that expert lawyers in the State, Commerce and Defense Departments have constructed an elaborate framework for interpreting these inconsistent provisions. But that does not make good law either for the Administration (witness the Iran-contra affair) or for private American citizens who look to the law for guidance.

H.R. 3651 reaffirms this country's prohibition on exports of munitions to terrorist states and requires more detailed and periodic reporting by the executive branch of certain arms exports. This bill makes little substantive change in existing law. It is more in the character of a restatement of the law. For the most part it is not new law, but restated law.

In fact, / <sup>the Administration</sup> may testify today that the bill restates much of standing policy now being faithfully enforced by the executive branch. I would applaud such testimony. You certainly should not interpret this bill as a criticism of your efforts to enforce

current law. The intent of H.R. 3651 is to close potential loopholes and restate certain existing provisions to ensure that uniform standards are present in the U.S. Code.

Let me emphasize what H.R. 3651 does not do.

--It does not impose blanket sanctions on terrorist states. Its focus is strictly on arms exports and on certain goods and technology of military or "terrorist" value to terrorist states, items already regulated by current law.

--It does not eliminate the President's discretion. In fact, in some cases it broadens the President's discretion.

--H.R. 3651 does not impose management reform on the Administration. There is no tinkering with the management or structure of the National Security Council or the State, Commerce or Defense Departments.

--It does not revolutionize the manner in which arms exports are approved by the U.S. Government.

What H.R. 3651 does do is make selective amendments (many quite technical) to the Arms Export Control Act, the Foreign Assistance Act of 1961, the Export Administration Act and the Hostage Act of 1868.

--Section 40 of the Arms Export Control Act, the section which prohibits exports of arms to terrorist states, is significantly reinforced. Prohibited transactions are explained in greater detail, both for the U.S. Government and for U.S. persons. The President's waiver authority can be exercised, but Congress must be notified in advance.



--A clear line is drawn between overt and covert arms transfers to terrorist states. If the arms transfer is covert, then it must be reported to Congress in accordance with the National Security Act.

--Sections 3(a) and 38 of the Arms Export Control Act and Section 505 of the Foreign Assistance Act of 1961 would be amended to require that before the President consents to the transfer of military weapons from a recipient country to a third country, he must give prior notification to Congress.

--Section 36(a) of the Arms Export Control Act would be amended to require quarterly reports from the President of inter-agency transfers of military weapons which ultimately are disposed of overseas.

--Section 6(j) of the Export Administration Act, which regulates the export of goods and technology of military or "terrorist" value to terrorist states, would be amended (1) to eliminate the current \$1,000,000 annual threshold amount under which the executive currently does not have to report to Congress, and (2) require validated licenses for all the covered exports and 30-day prior notification to Congress.

--The Hostage Act of 1868 would be amended simply to clarify that the President's authority to take action to release hostages cannot be carried out in a manner which would otherwise be prohibited by law.

Since the bill was introduced last November, extensive discussions have taken place at the staff level to address the concerns of the executive branch, private industry and Members on the other side of the aisle.

There has been so much progress that a substitute bill has been drawn up. It was provided to our witnesses yesterday. (It is also in the folders for Members.) I realize that the executive branch and some of my colleagues have not yet had time to digest the substitute, so I want to point out a few key revisions which respond to our witnesses' concerns:

--The substitute greatly restricts the extraterritorial reach of the prohibitions on arms transfers found in the original bill.

--When a state is put on the terrorist list, the substitute protects the financial interests of suppliers, preserves the validity of presidential consents for third-country transfers, and protects the interests of arms exporters who have export licenses.

--The substitute adopts a stream-lined criterion for classifying a country on the terrorist list. What concerned so many, the "sanctuary test", has now been included simply as an example of the operative test: that a government repeatedly support acts of international terrorism.

--The substitute adopts a "reason to know" standard for prohibitions which apply to United States persons, rather than a "reason to believe" standard found in the original bill.

--The substitute resurrects from current law the "significant contribution to military potential" standard which applies to the exports of goods and technology to terrorist states. The substitute also abandons the presumption of denial for validated licenses which was found in the original bill.

--The substitute does not require quarterly reports from the Department of Defense about inter-agency transfers of arms which are transferred in connection with intelligence activities and are reportable under the National Security Act.

--The substitute permits the President to take a country off the Secretary of State's terrorist list immediately if there is a fundamental change in its government and it ceases supporting international terrorism. This provides the President far greater flexibility than he has under current law.

There will be more discussion as this bill approaches mark-up. We intend to work closely with the Administration so that the bipartisan effort already put into H.R. 3651 can be continued.

I welcome Mr. Bremer and Mr. Holmes and look forward to their testimony today. Thank you, Mr. Chairman.

## INFORMATION MEMORANDUM

### H.R. 3651 Antiterrorism and Arms Export Amendments Act

March 17, 1988

During the last year a clear need has developed to reaffirm two fundamental principles of American foreign policy embodied in statute law: 1) the prohibition on the export of military weapons to states which support international terrorism, and 2) the obligation of the executive branch to keep Congress informed of both overt and covert exports of military weapons to foreign governments. While these principles are clear, and while they have been publicly supported by the Reagan Administration and Congress, the implementation of them pursuant to the law remains in doubt.

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The Act would amend the Arms Export Control Act, the Foreign Assistance Act of 1961, the Export Administration Act and the Hostage Act of 1868. The legislation includes the following major provisions:

--Section 40 of the Arms Export Control Act, which prohibits exports of arms to terrorist states, would be significantly reinforced. Prohibited transactions are explained in detail, both with respect to U.S. Government activities and private transactions. The President could waive the prohibitions for specific transactions, but only with prior, detailed reporting to Congress (on a classified basis if necessary). A clear line is drawn between overt transfers to terrorist states and arms transfers which are part of approved intelligence activities. The amended Section 40 also would have criminal penalties similar to those found in the Export Administration Act.

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**JOINT SUBCOMMITTEE MEETING NOTICE**

**Committee on Foreign Affairs**

**U.S. House of Representatives**

**Washington, DC 20515**

**SUBCOMMITTEE ON ARMS CONTROL, INTERNATIONAL  
SECURITY AND SCIENCE**

Hon. Dante B. Fascell, Chairman

**SUBCOMMITTEE ON INTERNATIONAL  
ECONOMIC POLICY AND TRADE**

Hon. Don Bonker, Chairman

**SUBCOMMITTEE ON INTERNATIONAL OPERATIONS**

Hon. Dan Mica, Chairman

March 10, 1988

TO: MEMBERS, COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend the following OPEN SESSION of the Subcommittees on Arms Control, International Security and Science, on International Economic Policy and Trade, and on International Operations:

DATE: Thursday, March 17, 1988

TIME: 11:00 AM

PLACE: Room <sup>2200</sup> 2172 Rayburn Building

SUBJECT: ANTI-TERRORISM POLICY AND ARMS EXPORT CONTROLS

WITNESSES: Hon. L. Paul BREMER  
Ambassador-at-Large for Counterterrorism  
Department of State

Hon. H. Allen HOLMES  
Assistant Secretary  
Bureau of Politico-Military Affairs  
Department of State

John J. Brady, Jr.  
Chief of Staff

STATEMENT BY H. ALLEN HOLMES  
ASSISTANT SECRETARY OF STATE FOR POLITICO-MILITARY AFFAIRS  
BEFORE THREE SUBCOMMITTEES OF THE  
HOUSE FOREIGN AFFAIRS COMMITTEE  
MARCH 17, 1988

MR. CHAIRMAN, I AM PLEASED TO APPEAR BEFORE THE THREE SUBCOMMITTEES TODAY TO DISCUSS H.R 3651, THE "ANTITERRORISM AND ARMS EXPORT AMENDMENTS ACT OF 1987." THE STATED PURPOSE OF THIS BILL IS "TO PROHIBIT EXPORTS OF MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM, AND FOR OTHER PURPOSES." THE ADMINISTRATION FULLY SUPPORTS STRENGTHENING OUR FIGHT AGAINST TERRORISM GENERALLY AND, MORE SPECIFICALLY, STATE-SUPPORTED TERRORISM. IN OUR VIEW, HOWEVER, THIS BILL IS PRIMARILY AN ARMS EXPORT CONTROL AND ECONOMIC SANCTIONS BILL; ITS COUNTERTERRORISM ELEMENTS ARE RATHER LIMITED. WE HAVE SERIOUS OBJECTIONS TO H.R. 3651 AS DRAFTED, AND BELIEVE THAT THE BILL WILL CREATE MORE PROBLEMS THAN IT WILL SOLVE--SPECIFICALLY IN THE AREAS OF ARMS EXPORT CONTROLS AND INTELLIGENCE OPERATIONS. MOREOVER, MANY OF THE PROHIBITIONS CONTAINED IN THE BILL, RELATING FOR EXAMPLE TO "DIRECT AND INDIRECT" ASSISTANCE IN CONNECTION WITH CERTAIN TRANSFERS, ARE CAST IN VAGUE OR UNDEFINED TERMS. THE JUSTICE DEPARTMENT HAS INFORMED US THAT THE PROVISIONS COULD BE INTERPRETED TO CIRCUMSCRIBE IMPROPERLY THE PRESIDENT'S CONSTITUTIONAL POWERS IN THE FIELD OF FOREIGN AFFAIRS. THAT DEPARTMENT PLANS TO PROVIDE YOU WITH A LETTER SETTING FORTH SUCH CONSTITUTIONAL CONCERNS.

I WILL FIRST ADDRESS THE ARMS EXPORT PORTIONS OF THE BILL. THE ADMINISTRATION FAILS TO SEE THE NECESSITY TO IMPOSE ADDITIONAL CONSTRAINTS ON AND CONGRESSIONAL OVERSIGHT OF ARMS



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EXPORTS. WE UNDERSTAND THAT THE BILL IS MOTIVATED, IN PART, BY A DESIRE TO MAKE LEGISLATIVE CHANGES IN THE AFTERMATH OF THE IRAN-CONTRA INVESTIGATION. IN FACT, THE FINDINGS OF THE IRAN-CONTRA INVESTIGATION CONCLUDED THAT THE EXISTING LAWS AND CONTROL MEASURES WERE ADEQUATE, IF FOLLOWED, IN THE REGULATION OF ARMS EXPORTS. THE CONGRESSIONAL SELECT COMMITTEES CONCLUDED WITH RESPECT TO THAT INVESTIGATION "THAT THE IRAN-CONTRA AFFAIR RESULTED FROM THE FAILURE OF INDIVIDUALS TO OBSERVE THE LAW, NOT FROM DEFICIENCIES IN EXISTING LAW OR IN OUR SYSTEM OF GOVERNANCE. THIS IS AN IMPORTANT LESSON TO BE LEARNED FROM THESE INVESTIGATIONS BECAUSE IT POINTS TO THE FUNDAMENTAL SOUNDNESS OF OUR CONSTITUTIONAL PROCESSES. THUS, THE PRINCIPAL RECOMMENDATIONS EMERGING FROM THE INVESTIGATION ARE NOT FOR NEW LAWS BUT FOR A RENEWAL OF THE COMMITMENT TO CONSTITUTIONAL GOVERNMENT AND SOUND PROCESSES OF DECISIONMAKING."

IN OUR VIEW, H.R. 3651 IS A RESPONSE TO THE ACTIONS OF INDIVIDUALS WHO MAY HAVE CIRCUMVENTED EXISTING LAW. NONE OF THE ACTIONS IN THE IRAN-CONTRA AFFAIR WERE, TO THE BEST OF OUR KNOWLEDGE, CHARACTERIZED IN TERMS OF ARMS EXPORT AUTHORITIES, OR AMBIGUITIES IN SUCH AUTHORITIES. THE PROVISIONS OF H.R. 3651 DEALING WITH THE AECA, HAD THEY BEEN LAW AT THE TIME OF IRAN-CONTRA, WOULD NOT HAVE PREVENTED ACTIONS TAKEN PURSUANT TO UNRELATED AUTHORITIES. AMENDING OR RESTRICTING EXISTING AECA AUTHORITIES WOULD NOT NECESSARILY DETER THIS TYPE OF BEHAVIOR IN

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THE FUTURE. INSTEAD, THEY WOULD CRIPPLE THE EXECUTIVE BRANCH'S MECHANISMS TO PROVIDE ARMS EXPORTS AND SECURITY ASSISTANCE WITHIN EXISTING LAW IN A TIMELY AND RATIONAL MANNER.

A PRIMARY ADMINISTRATION CONCERN IS THE NEW DEFINITION IN H.R. 3651 OF A "U.S. PERSON", I.E., WHICH INDIVIDUALS OR GROUPS WOULD BE SUBJECT TO U.S. REGULATION AND CRIMINAL PROSECUTION UNDER THE LAW. THE BILL PROPOSES TO DEFINE "UNITED STATES PERSON" AS "ANY UNITED STATES RESIDENT OR NATIONAL (OTHER THAN AN INDIVIDUAL RESIDENT OUTSIDE THE UNITED STATES AND EMPLOYED BY OTHER THAN A UNITED STATES PERSON), ANY DOMESTIC CONCERN (INCLUDING ANY PERMANENT DOMESTIC ESTABLISHMENT OF ANY FOREIGN CONCERN) AND ANY FOREIGN SUBSIDIARY OR AFFILIATE (INCLUDING ANY PERMANENT FOREIGN ESTABLISHMENT) OF ANY DOMESTIC CONCERN WHICH IS CONTROLLED IN FACT BY SUCH DOMESTIC CONCERN, AS DETERMINED UNDER REGULATIONS OF THE PRESIDENT."

THE DISCLAIMER "(OTHER THAN AN INDIVIDUAL RESIDENT OUTSIDE THE UNITED STATES AND EMPLOYED BY OTHER THAN A UNITED STATES PERSON)" ACTUALLY WOULD PLACE OUTSIDE OF OUR JURISDICTION SOME PERSONS WHO HERETOFORE COULD HAVE BEEN PROSECUTED FOR THE UNAUTHORIZED TRANSFER OF U.S. ORIGIN MUNITIONS TO A THIRD COUNTRY.

ON THE OTHER HAND, WE BELIEVE THAT THE INCLUSION OF "ANY FOREIGN SUBSIDIARY OR AFFILIATE (INCLUDING ANY PERMANENT FOREIGN ESTABLISHMENT) OF ANY DOMESTIC CONCERN WHICH IS CONTROLLED IN

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FACT BY SUCH DOMESTIC CONCERN" WILL CAUSE FRIENDS AND ALLIES SERIOUS CONCERNS OVER INFRINGEMENT OF SOVEREIGN AUTHORITIES. FOR EXAMPLE, ITS EFFECT WOULD BE TO IMPOSE U.S. CRIMINAL JURISDICTION ON FOREIGN BASED CORPORATIONS, ACTING IN ACCORDANCE WITH THE LAWS OF THEIR HOST COUNTRY, SOLELY ON THE HAPPENSTANCE THAT ON A GIVEN DATE THEIR PUBLICLY TRADED SHARES ARE HELD PREPONDERANTLY BY U.S. NATIONALS. THIS DEFINITION WOULD PLACE THE UNITED STATES IN CONFLICT WITH EVEN OUR CLOSEST ALLIES, WHO FIND IT UNREASONABLE FOR THE U.S. TO ATTEMPT TO CONTROL CORPORATIONS CHARTERED AND OPERATING WITHIN THEIR NATIONAL JURISDICTIONS.

EXPERIENCE HAS TAUGHT US THAT THE MOST EFFECTIVE WAY TO ACHIEVE THE SUPPORT OF OUR ALLIES AND FRIENDS IN PURSUIT OF A COMMON OBJECTIVE IS TO APPROACH THEM DIRECTLY AND CONVINCE THEM THAT THE PARTICULAR OBJECTIVE IS IN OUR COMMON INTEREST. ATTEMPTS TO APPLY U.S. LAW EXTRATERRITORIALLY USUALLY PRODUCE A VOCIFEROUS NEGATIVE REACTION, WHICH TRANSFORMS THE DISCUSSION FROM ONE OF SEEKING A SOLUTION TO A COMMON PROBLEM TO A JURISDICTIONAL DISPUTE AMONG ALLIES.

SECONDLY, WE HAVE SERIOUS PROBLEMS WITH THE NEW DEFINITION OF "MUNITIONS ITEM", WHICH INCLUDES FOR THE FIRST TIME NON-U.S. ORIGIN ITEMS NEVER PASSING THROUGH U.S. TERRITORY. THIS HAS WIDE-RANGING REGULATORY AND BUDGETARY IMPLICATIONS. TO IMPLEMENT THIS NEW DEFINITION, THE EXECUTIVE BRANCH WOULD BE OBLIGED TO MONITOR THE EXPORT OF EXCLUSIVELY FOREIGN MADE ITEMS FROM THE

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JURISDICTION OF ONE FOREIGN SOVEREIGN NATION TO ANOTHER. THE RESULTING INFORMATION WOULD HAVE TO BE TAKEN INTO ACCOUNT IN THE STATE DEPARTMENT'S LICENSING PROCESS. OTHER NATIONS WOULD CHAFE AT THIS INTERFERENCE IN THEIR COMMERCIAL AFFAIRS, EVEN IF IT WERE ENFORCEABLE AND BUDGETARILY FEASIBLE. ON THE FISCAL SIDE, THE IMPACT OF ESTABLISHING A NEW SYSTEM TO MANAGE THESE FUNCTIONS WOULD BE SUBSTANTIAL, REQUIRING ADDITIONAL RESOURCES FOR THE OFFICE OF MUNITIONS CONTROL.

THIRDLY, THE PROPOSED AMENDMENTS TO SECTION 40(a)(1)(C) AND (D) OF THE ARMS EXPORT CONTROL ACT, WHICH WOULD REQUIRE THAT THIRD PARTY TRANSFER CONSENTS BE WITHDRAWN FOR ANY COUNTRY ON THE LIST OF TERRORIST COUNTRIES, COULD GIVE US MAJOR MONITORING AND FOREIGN POLICY PROBLEMS. MOREOVER, THE CONCEPT IS FLAWED AND INCONSISTENT WITH OTHER GOALS UNDERLYING THE BILL. UNDER OUR CURRENT IMPLEMENTATION OF THE ARMS EXPORT CONTROL ACT, THE CONSENT TO TRANSFER CARRIES WITH IT ALL THE CONTROLS AND CONDITIONS IMPOSED BY THE USG AND REMAINS IN EFFECT INDEFINITELY, EVEN BEYOND ACTUAL PHYSICAL TRANSFER. NULLIFICATION OF TRANSFER CONSENTS ACTUALLY WOULD EMINATE U.S. CONTROLS, NOT INCREASE THEM.

WE ASSUME THAT THE INTENT OF THE DRAFTERS OF THIS SECTION IS THAT TRANSFER CONSENT BE DENIED WHERE PHYSICAL TRANSFER HAS NOT YET OCCURRED. MAJOR REDRAFTING WOULD BE NECESSARY TO ACHIEVE THIS; BUT EVEN MODIFICATIONS ON THIS POINT WOULD REMAIN

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OBJECTIONABLE. WHERE U.S.-APPROVED DEALS WERE ALREADY AGREED AND CONSUMMATED, EVEN IF DELIVERIES HAVE NOT BEEN COMPLETED, WITHDRAWAL OF CONSENT WOULD FORCE GOVERNMENTS OF FRIENDS AND ALLIES TO CHOOSE BETWEEN FLOUTING U.S. LAW OR VIOLATING CONTRACTUAL OBLIGATIONS, INCURRING DIRECT FINANCIAL PENALTIES, AND FOREGOING FINANCIAL BENEFITS. THIS WOULD SIMPLY INCREASE CONFLICTS OVER COUNTERTERRORISM POLICY.

SECTION 6 OF THE BILL WOULD REQUIRE 15-DAY ADVANCE NOTICE TO CONGRESS OF INTENT TO CONSENT TO ANY THIRD COUNTRY TRANSFER, WHERE NOTIFICATIONS ARE NOT ALREADY REQUIRED UNDER AECA 36(d) OR AECA 3(d)(3). THIS ELIMINATES THE DOLLAR THRESHOLDS OF \$14 AND \$50 MILLION CURRENTLY IN EFFECT. THE BROAD SCOPE OF THESE PROVISIONS DOES NOT SEEM TO BE DIRECTLY RELEVANT TO THE PRIMARY CONCERN OF THE BILL, THAT IS, TO TIGHTEN CONTROLS ON THE POSSIBLE SUPPLY OF MILITARY EQUIPMENT TO TERRORIST COUNTRIES. THESE PROVISIONS WOULD CREATE BURDENSOME NEW ADMINISTRATIVE PROCEDURES, BOTH FOR THE EXECUTIVE BRANCH AND CONGRESS, AND DO LITTLE, IF ANYTHING, TO STRENGTHEN OUR ANTITERRORIST POSTURE. THEY WOULD REQUIRE NOTIFICATIONS AND WAITING PERIODS FOR THE MOST INSIGNIFICANT TRANSACTIONS TO ANY COUNTRY IN THE WORLD, AND FOR TRANSFERS TO CLEARLY BONA FIDE RECIPIENTS, E.G., DONATIONS OF OBSOLETE WWII RELICS TO MUSEUMS AND SALES OR GIFTS OF EQUIPMENT FROM ONE NATO ALLY TO ANOTHER.

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EXISTING NOTIFICATION REQUIREMENTS ALREADY PROVIDE CONGRESS WITH THE OPPORTUNITY TO EXERCISE OVERSIGHT OVER RELATIVELY LARGE SCALE TRANSFERS WITH A VIEW TO THE BROAD SCOPE OF U.S. INTERESTS AND POLICY CONCERNS. MOREOVER, THE AECA PROHIBITS USE OF ITS TRANSFER AUTHORITIES TO CONSENT TO A TRANSFER OF ANY SIZE TO A COUNTRY TO WHICH A DIRECT U.S. TRANSFER WOULD NOT BE MADE, INCLUDING TO THOSE COUNTRIES LISTED AS SUPPORTERS OF INTERNATIONAL TERRORISM. THE PROHIBITIONS ON "FACILITATING" TRANSFERS AND THE "DIRECTLY OR INDIRECTLY" LANGUAGE IN THE PROPOSED BILL DO LITTLE, IF ANYTHING, TO EXTEND THIS EXISTING PROHIBITION. THEREFORE, THE EFFECT OF THE PROPOSED SECTION 6 WOULD BE TO REQUIRE NOTIFICATIONS AND ATTENDANT DELAYS IN THE CASE OF NONPROHIBITED, NONSUSPECT AND OFTEN TRIVIAL THIRD COUNTRY TRANSACTIONS.

WE ALSO WISH TO DRAW THE SUBCOMMITTEES' ATTENTION TO TWO ASPECTS OF SECTION 5 OF H.R. 3651 WHICH COULD HAVE A SIGNIFICANT IMPACT UPON THE PROGRAMS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES WHOSE PURPOSE IS TO SUPPORT EXPORTS OF U.S. GOODS AND SERVICES. UNDER SECTION 620A OF THE FAA, THE BANK IS CURRENTLY PROHIBITED FROM PROVIDING SUPPORT FOR EXPORTS TO A COUNTRY THAT SUPPORTS INTERNATIONAL TERRORISM, UNLESS A WAIVER IS MADE ON NATIONAL SECURITY OR HUMANITARIAN GROUNDS. UNDER SECTION 5, EXIMBANK WOULD NO LONGER BE ABLE TO PROVIDE SUPPORT TO A COUNTRY WHERE A WAIVER IS BASED UPON HUMANITARIAN GROUNDS. WE BELIEVE THIS PROPOSED CHANGE MAY BE BASED UPON A MISUNDERSTANDING OF THE

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TYPE OF PROJECTS OR PRODUCTS EXIMBANK SUPPORTS. COMMERCIAL EXPORT SALES BY U.S. SUPPLIERS SUPPORTED BY THE BANK INCLUDE MANY PROJECTS OR PRODUCTS OF A HUMANITARIAN NATURE, E.G., PROJECTS INVOLVING HOSPITALS AND SUCH PRODUCTS AS MEDICAL SUPPLIES AND PHARMACEUTICALS.

LET ME NOW TURN TO THOSE ASPECTS OF THE BILL RELATING TO EXPORT ADMINISTRATION. THE PROPOSED CHANGES TO THE LICENSING AND NOTIFICATION PROCEDURES OF THE EXPORT ADMINISTRATION ACT WOULD LEAD TO (1) SIGNIFICANTLY INCREASED PAPERWORK FOR BOTH THE PRIVATE AND PUBLIC SECTORS, (2) MAJOR EXPORT LOSSES FOR U.S. MANUFACTURERS, AND (3) UNDERMINING OF OUR STRATEGIC RELATIONSHIPS. THE ADMINISTRATION HAS SUPPORTED, AND WILL CONTINUE TO SUPPORT, EXPORT CONTROLS ON TERRORIST COUNTRIES IF THOSE CONTROLS CAN BE TAILORED TO EACH PARTICULAR SITUATION TO ENSURE MAXIMUM EFFECTIVENESS. MERELY TO CUT OFF EXPORTS OF WIDE CATEGORIES OF ITEMS AVAILABLE OPENLY ON WORLD MARKETS WITHOUT REGARD TO THE SPECIFICS OF EACH COUNTRY PENALIZES U.S. BUSINESS WITHOUT ASSURING THAT THE TARGET COUNTRY WILL SUFFER ANY MEANINGFUL IMPACT. AND IT CLEARLY RESULTS IN NO MEANINGFUL PUNISHMENT FOR TERRORISTS.

THE ELIMINATION OF ANY THRESHOLD AMOUNT FOR NOTIFICATION APPEARS TO ADDRESS A NON-ISSUE. THE LAW WAS RECENTLY AMENDED TO CUT THE THRESHOLD AMOUNT FROM \$7 MILLION TO \$1 MILLION. FURTHER REDUCTION APPEARS WHOLLY UNNECESSARY, PARTICULARLY IN LIGHT OF

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THE FACT THAT WE HAVE TOTAL TRADE EMBARGOS WITH THREE OF THE SIX COUNTRIES PRESENTLY ON THE "LIST." IN ANY EVENT, TO ELIMINATE THE THRESHOLD ENTIRELY AND FORCE NOTIFICATION OF POTENTIALLY TRIVIAL EXPORTS SEEMS UNREASONABLE. WE WOULD RECOMMEND THAT AT LEAST A REASONABLE THRESHOLD BE MAINTAINED.

AS WILL BE DISCUSSED IN MORE DETAIL BY AMBASSADOR BREMER, WE OPPOSE EXPANDING THE EXPORT CONTROL STANDARD TO INCLUDE GOVERNMENTS OF COUNTRIES THAT GRANT SANCTUARY FROM PROSECUTION TO AN INDIVIDUAL OR GROUP WHICH HAS COMMITTED AN ACT OF INTERNATIONAL TERRORISM. THIS STANDARD IS SIMPLY TOO VAGUE AND BROAD AND COULD HAVE A SEVERE DETRIMENTAL EFFECT ON OUR COCOM RELATIONS. APPLYING THIS NEW STANDARD COULD FORCE THE IMPOSITION OF CONTROLS ON COUNTRIES WITH WHICH WE HAVE LONGSTANDING NATIONAL SECURITY ALLIANCES.

IN ADDITION, THE BILL REQUIRES VALIDATED LICENSES FOR THE EXPORT OF GOODS OR TECHNOLOGY TO COUNTRIES DETERMINED BY THIS NEW STANDARD, AND THEN MANDATES A GENERAL POLICY REQUIRING DENIAL OF SUCH VALIDATED LICENSE. WE OPPOSE THIS STATUTORILY MANDATED LICENSING STANDARD. THROUGH THE YEARS, THIS COMMITTEE HAS CAREFULLY DRAFTED THE EXPORT ADMINISTRATION ACT TO GIVE THE EXECUTIVE BROAD DISCRETION TO DETERMINE WHAT LICENSING STANDARD SHOULD APPLY TO PARTICULAR EXPORT CONTROLS. TO NOW LEGISLATE A LICENSING STANDARD IN THIS ONE AREA WOULD SEVERELY HAMPER OUR



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FLEXIBILITY TO DEAL WITH INDIVIDUAL CASES AND WOULD ESTABLISH A PRECEDENT FOR LICENSING STANDARDS IN OTHER TYPES OF CONTROL PROGRAMS.

FINALLY, THIS NEW LANGUAGE REQUIRES A VALIDATED LICENSE FOR EXPORTS TO DESIGNATED COUNTRIES OF ALL GOODS OR TECHNOLOGY WHICH WOULD CONTRIBUTE TO THE MILITARY POTENTIAL OF THOSE COUNTRIES. THE STANDARD IN THE EXISTING EXPORT CONTROL LAW PROVIDES THAT GOODS OR TECHNOLOGY MUST MAKE A SIGNIFICANT CONTRIBUTION TO THE MILITARY POTENTIAL OF A TERRORIST SUPPORTING COUNTRY. THE NEW STANDARD COULD MEAN THAT EVEN THE MOST INCONSEQUENTIAL ITEM WOULD BE SUBJECT TO THE VALIDATED LICENSING REQUIREMENT AND PRESUMPTION OF DENIAL." IN SUMMARY, THE TIGHT EXPORT SANCTIONS THAT COULD BE APPLIED TO "SUPPORTERS" OF TERRORISM ARE FAR MORE LIKELY TO HARM U.S. BUSINESS THAN ANY KNOWN OR SUSPECTED TERRORISTS.

SECTIONS 7 AND 8 OF THE DRAFT BILL WOULD EFFECT MAJOR CHANGES IN HOW AND WHAT THE ADMINISTRATION REPORTS TO THE CONGRESS REGARDING EXTREMELY SENSITIVE INTELLIGENCE ACTIVITIES. THE ADDITIONAL REPORTING REQUIREMENTS COULD ALSO ENCUMBER OUR SECURITY ASSISTANCE PROCEDURES WHICH GOVERN OVERT PROGRAMS. THE ADMINISTRATION'S MAJOR OBJECTION TO SECTION 7 IS THAT IT WOULD REQUIRE REPORTING OF INFORMATION THAT IS RELATED TO SENSITIVE INTELLIGENCE OPERATIONS THAT IS PROVIDED TO THE INTELLIGENCE COMMITTEES OF THE CONGRESS UNDER TITLE V OF THE NATIONAL SECURITY ACT. THE DETAILS OF THESE OPERATIONS ARE TIGHTLY COMPARTMENTED.

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REPORTING THAT DUPLICATES THIS REQUIREMENT RUNS COUNTER TO THE CURRENT STATUTORY FRAMEWORK THAT GENERALLY CONFINES REPORTING OF INTELLIGENCE ACTIVITIES TO THE INTELLIGENCE OVERSIGHT COMMITTEES RATHER THAN THE FOREIGN AFFAIRS COMMITTEES.

THE ADMINISTRATION ALSO OPPOSES SECTION 8 AS UNNECESSARY. DIRECT INCLUSION OF A REPORTING REQUIREMENT FOR INTELLIGENCE ACTIVITIES IN THE AECA, SUPPORTED AT LEAST BY CRIMINAL PENALTIES, SUGGESTS THAT SUCH TRANSFERS ARE A PART OF THE AECA FRAMEWORK WHEN, IN FACT, THEY ARE NOT AND SHOULD NOT BE. INSTEAD, EXISTING REQUIREMENTS TO REPORT TO THE INTELLIGENCE COMMITTEES ON COVERT ARMS TRANSFERS ARE CONTAINED IN THE NATIONAL SECURITY ACT. SPECIFICALLY, SECTION 503 OF THE NATIONAL SECURITY ACT REQUIRES THE CIA TO NOTIFY THE INTELLIGENCE COMMITTEES OF THE TRANSFER OF DEFENSE ARTICLES OR SERVICES IN EXCESS OF \$1,000,000. SECTION 501 OF THE NATIONAL SECURITY ACT ALSO REQUIRES THE CIA TO KEEP THE INTELLIGENCE COMMITTEES INFORMED OF SIGNIFICANT ANTICIPATED INTELLIGENCE ACTIVITIES, AND THIS WOULD INCLUDE THE TRANSFER OF SIGNIFICANT AMOUNTS OF DEFENSE ARTICLES OR SERVICES, EVEN IF VALUED AT LESS THAN \$1,000,000.

THE SUBJECT OF REPORTING ON ARMS TRANSFERS IS CURRENTLY BEING DISCUSSED IN CONNECTION WITH THE VARIOUS INTELLIGENCE OVERSIGHT BILLS NOW PENDING BEFORE THE CONGRESS, INCLUDING A PROPOSED AMENDMENT TO THE NATIONAL SECURITY ACT. THE ADMINISTRATION HAS EXPRESSED SERIOUS RESERVATIONS REGARDING THESE

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OVERSIGHT BILLS. WE THINK SECTIONS 7 AND 8 ARE DUPLICATIVE AND UNNECESSARY AND THAT THE INTELLIGENCE COMMITTEE SHOULD BE GIVEN AN OPPORTUNITY TO FULLY EXPLORE THE ADVERSE IMPACT THIS BILL COULD HAVE ON INTELLIGENCE OPERATIONS BEFORE THE HOUSE TAKES UP CONSIDERATIONS OF THIS BILL.

IN CONCLUSION, MR. CHAIRMAN, LET ME REITERATE MY FIRST POINT -- NAMELY, THAT WE SUPPORT EFFECTIVE ANTITERRORISM LEGISLATION THAT WILL PROVIDE THE TOOLS WITH WHICH TO FORMULATE A MORE EFFECTIVE ANTITERRORIST POLICY. UNFORTUNATELY, H.R. 3651, AS DRAFTED, DOES NOT MEET THIS TEST. IT ALSO HAS EXTREMELY ONEROUS ARMS TRANSFER AND INTELLIGENCE PROVISIONS THAT HAVE LITTLE, IF ANY, RELATIONSHIP TO THE TERRORIST ISSUE. THUS WE OPPOSE ENACTMENT OF THE BILL.

WE STAND READY, HOWEVER, TO COOPERATE WITH THE COMMITTEE IN AN EFFORT TO FORMULATE LEGISLATION THAT WILL FURTHER OUR ANTITERRORIST OBJECTIVES AND ENHANCE RATHER THAN POTENTIALLY DETRACT FROM OUR ABILITY TO COOPERATE WITH OUR ALLIES AND FRIENDS IN THIS NECESSARILY MULTINATIONAL ENDEAVOR. SUCH LEGISLATION MUST ENSURE THAT THE CHIEF OBJECT OF ANY SANCTIONS ARE TERRORISTS AND THEIR SUPPORTERS AND NOT U.S BUSINESS OR VALUED ALLIES AS IS THE CASE IN H.R. 3651.

AMBASSADOR BREMER WHO WILL ALSO MAKE A STATEMENT AND MY COLLEAGUES FROM THE COMMERCE DEPARTMENT, THE DEFENSE DEPARTMENT, AND THE CENTRAL INTELLIGENCE AGENCY ARE READY TO ASSIST ME IN RESPONDING TO YOUR QUESTIONS.

TESTIMONY BY L. PAUL BREMER, III  
AMBASSADOR AT LARGE FOR COUNTERTERRORISM  
BEFORE THREE HOUSE FOREIGN AFFAIRS SUBCOMMITTEES  
ON H.R. 3651

MARCH 17, 1988

MR. CHAIRMAN:

I APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY ON HR 3651  
AND INTERNATIONAL TERRORISM.

ALLEN HOLMES ALREADY HAS TESTIFIED ON THE ARMS EXPORT  
CONTROL AND RELATED ASPECTS OF THE BILL. THEREFORE I WISH TO  
FOCUS ON THE SPECIFICALLY ANTI-TERRORISM POLICY-RELATED  
PROVISIONS. TO DO SO IN THE PROPER CONTEXT, HOWEVER, I BELIEVE  
IT WOULD BE USEFUL TO FIRST PROVIDE THE COMMITTEE WITH A BRIEF  
OVERVIEW OF RECENT DEVELOPMENTS IN THE FIGHT AGAINST  
INTERNATIONAL TERRORISM -- ESPECIALLY STATE-SUPPORTED  
TERRORISM.

#### OVERVIEW OF 1987

OVER THE PAST TWO YEARS, THE INTERNATIONAL FIGHT AGAINST  
INTERNATIONAL TERRORISM HAS MADE CONSIDERABLE PROGRESS. THE  
NUMBER OF INCIDENTS HAS DECREASED AND STATE SPONSORSHIP OF  
TERRORISM IS DOWN. FEWER AMERICANS HAVE BEEN KILLED. MORE  
TERRORISTS HAVE BEEN ARRESTED AND CONVICTED BY COURTS FROM  
TOKYO TO PARIS.

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ACCORDING TO OUR LATEST STATISTICS ON TERRORISM IN 1987, THE NUMBER OF ANTI-U.S. ATTACKS WORLDWIDE DECREASED 25%, AND TERRORISM IN LATIN AMERICA DROPPED 32%. IN EUROPE, TERRORISM IS STEADILY DECLINING; IT HAS FALLEN 31% IN THE PAST TWO YEARS. TERRORISM IN EUROPE OF MIDDLE EAST ORIGIN IS DOWN 41%. THERE WERE ONLY TWO TERRORIST HIJACKINGS IN 1986, AND ONLY ONE LAST YEAR, WHICH IS THE LOWEST NUMBER WE HAVE RECORDED SINCE WE BEGAN KEEPING TALLIES 20 YEARS AGO.

IN SPITE OF THESE SUCCESSES, THE OVERALL NUMBER OF TERRORIST ATTACKS ROSE, MAKING 1987 THE WORST YEAR EVER. IT WAS ALSO THE BLOODIEST YEAR; MORE PERSONS WERE WOUNDED IN TERRORIST ATTACKS THAN EVER BEFORE -- WELL OVER 2000 -- AND OVER 600 PERSONS DIED. THESE INCREASES CAN BE EXPLAINED IN ONE WORD: AFGHANISTAN.

### AFGHANISTAN

THE MOST APPALLING FEATURE OF TERRORISM IN 1987 WAS THE SHARP ESCALATION OF THE TERRORIST BOMBING CAMPAIGN IN PAKISTAN, MUCH OF IT THE WORK OF THE AFGHAN SECRET POLICE. THE 128 BOMBINGS, WHICH DESTROYED MARKETPLACES AND TRAIN STATIONS, WERE CALCULATED TO KILL AND INJURE AS MANY PEOPLE AS POSSIBLE. FULLY ONE THIRD OF ALL DEATHS AROUND THE WORLD FROM TERRORISM LAST YEAR AND ONE HALF OF ALL WOUNDED WERE CAUSED BY THIS BOMBING CAMPAIGN.

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SOME WOULD-BE BOMBERS HAVE BEEN ARRESTED BY PAKISTANI POLICE AND HAVE PROVIDED STARTLING TESTIMONY. FOR EXAMPLE, THE BOMBERS WERE PROMISED PAYMENT BASED ON THE NUMBER OF CASUALTIES INFLICTED AND THE NUMBER OF PRESS REPORTS THE ATTACK GENERATED. HAD IT NOT BEEN FOR THIS BRUTAL TERRORIST BOMBING CAMPAIGN, THE NUMBER OF WORLDWIDE TERRORIST ATTACKS WOULD HAVE DECLINED SIGNIFICANTLY. AND THE PERCENTAGE OF ATTACKS ATTRIBUTABLE TO STATE SPONSORS WOULD HAVE DROPPED FROM 23% TO 9%.

#### STATE-SUPPORTED TERRORISM

THE ISSUE OF STATE-SPONSORED TERRORISM IS OF MAJOR CONCERN TO THIS COMMITTEE, AND I'D LIKE TO GIVE YOU A RUNDOWN ON THAT SITUATION. DURING THE PAST THREE YEARS, WE ATTRIBUTE 87 TERRORIST ATTACKS TO IRAN, 40 TO SYRIA, AND 39 TO LIBYA. MOST OF THESE ATTACKS ATTRIBUTED TO THESE LAST THREE COUNTRIES WERE AGAINST DISSIDENTS OR WERE PART OF REGIONAL DISPUTES. THE NUMBER OF ATTACKS ACTUALLY CARRIED OUT BY THESE COUNTRIES -- AS OPPOSED TO THOSE WHICH MAY HAVE BEEN PLANNED -- HAS DROPPED SHARPLY SINCE THE SPRING OF 1986.

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HERE IS AN OVERVIEW:

### SYRIA

THE ECONOMIC AND OTHER MEASURES IMPOSED ON SYRIA BY THE U.S. AND EUROPEAN COUNTRIES HAVE HAD SOME EFFECT. LAST SUMMER, SYRIA EXPELLED ALL KNOWN ABU NIDAL TERRORISTS FROM ITS BORDERS. IN ADDITION, WE HAVE NOT DETECTED INVOLVEMENT BY THE SYRIAN GOVERNMENT IN ANY ACT OF TERRORISM FOR THE PAST 18 MONTHS. WE ARE PLEASED AT THIS PROGRESS, ALTHOUGH WE STILL HAVE STRONG CONCERNS ABOUT SYRIAN SUPPORT FOR TERRORISM. SYRIA REMAINS ON OUR LIST OF STATE SPONSORS OF TERRORISM BECAUSE IT HARBORS OTHER TERRORIST GROUPS IN DAMASCUS AND ALLOWS TERRORIST TRAINING CAMPS TO OPERATE IN LEBANON'S BEKKA VALLEY, WHICH IS UNDER SYRIAN CONTROL.

### LIBYA

COL. QADHAFI STILL TRIES TO RE-SHAPE THE WORLD THROUGH TERRORISM, BUT HE IS HAVING A HARDER TIME DOING SO. LIBYAN SPONSORED TERRORIST ACTIONS LAST YEAR WERE DOWN SHARPLY WHEN COMPARED WITH 1986. THAT YEAR THE U.S. BOMBED TERRORIST FACILITIES IN TRIPOLI, AND EUROPE TOOK A SERIES OF TOUGH MEASURES AGAINST LIBYA. STILL, LIBYAN AGENTS ARE ACTIVE THROUGHOUT THE WORLD. IN MAY OF LAST YEAR, AUSTRALIA CLOSED THE LIBYAN PEOPLE'S



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BUREAU, CITING CONCERN OVER INTENSE "CLANDESTINE ACTIVITY." LIBYAN DISSIDENTS WERE TARGETED IN ATHENS, ROME, AND VIENNA LAST YEAR. SWITZERLAND EXPELLED THREE LIBYANS LAST NOVEMBER FOR PLANNING ASSASSINATIONS. ALSO IN NOVEMBER, THE FRENCH SEIZED A SHIPMENT OF ARMS THAT ORIGINATED IN LIBYA AND WAS BOUND FOR THE PIRA. THE 150 TONS OF WEAPONS WAS THE LARGEST TERRORIST ARMS SHIPMENT EVER INTERCEPTED. JUST LAST MONTH THE GOVERNMENT OF SENEGAL ARRESTED THREE LIBYANS CARRYING EXPLOSIVES, DETONATORS, FIRING DEVICES, FUSES, WEAPONS, AND FALSE PASSPORTS.

### IRAN

WE ESTIMATE THAT THE IRANIAN REGIME WAS INVOLVED IN ABOUT 40 TERRORIST INCIDENTS IN 1987. THESE INCLUDE SIGNIFICANT ATTACKS BY IRANIAN-BACKED SABOTEURS AGAINST MAJOR KUWAITI OIL INSTALLATIONS; SMALLER BOMBINGS OF KUWAIT'S URBAN AREAS; ASSASSINATION OF ANTI-REGIME IRANIAN DISSIDENTS LIVING ABROAD; AND VARIOUS ATTACKS INSIDE IRAQ WITH WHOM IRAN IS CURRENTLY AT WAR.

IRANIAN LEADERS CONTINUE TO VIEW TERRORISM AS A LEGITIMATE FOREIGN POLICY INSTRUMENT FOR ADVANCING NATIONAL GOALS. TEHRAN USES TERRORISM SELECTIVELY AND SKILLFULLY IN COORDINATION WITH CONVENTIONAL DIPLOMACY AND MILITARY TACTICS. TEHRAN HAS TRIED UNSUCCESSFULLY TO USE TERRORISM TO INTIMIDATE PERSIAN GULF RULERS

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INTO ENDING THEIR AID TO BAGHDAD, TO DRIVE US AND FRENCH INFLUENCE FROM THE MIDDLE EAST REGION, AND TO ELIMINATE OPPONENTS OF THE REGIME. TEHRAN USED THE THREAT OF TERRORISM, ALONG WITH ATTACKS ON GULF SHIPPING, TO DISCOURAGE KUWAIT AND OTHER MODERATE ARAB GULF STATES FROM SUPPORTING THE US REFLAGGING EFFORT. LAST NOVEMBER, AMID INCREASED IRANIAN THREATS, THE U.S. TIGHTENED UP ITS ECONOMIC SANCTIONS AGAINST TEHRAN, INCLUDING THE BANNING OF CRUDE OIL IMPORTS AND EXPANDING THE SPECIFIC LIST OF CONTROLLED DUAL USE ITEMS.

LEBANON HAS BEEN THE SCENE OF MOST OF THE TERRORISM PERPETRATED BY IRANIAN-SUPPORTED GROUPS. TEHRAN CONTINUES TO PROVIDE SIGNIFICANT MONETARY AND MILITARY SUPPORT TO THE EXTREMIST SHIA HIZBALLAH WHICH IS RESPONSIBLE FOR THE KIDNAPPING AND DETENTION OF AMERICAN AND OTHER WESTERN HOSTAGES. ALTHOUGH HIZBALLAH IS NOT COMPLETELY CONTROLLED BY IRAN, TEHRAN HAS SUBSTANTIAL INFLUENCE OVER THE GROUP.

#### NORTH KOREA

SINCE JANUARY, WHEN EVIDENCE WAS DISCOVERED PROVING NORTH KOREA'S SPONSORSHIP OF THE DESTRUCTION OF KAL 858, THE GOVERNMENT OF SOUTH KOREA, THE U.S., AND OTHER COUNTRIES HAVE BEEN ACTIVE IN TRYING TO FOCUS WORLD ATTENTION ON NORTH KOREA. THERE WAS A FULL

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DISCUSSION IN THE U.N. SECURITY COUNCIL LAST MONTH. LATER NEXT WEEK THE ISSUE WILL BE DISCUSSED AT THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO) COUNCIL MEETING IN MONTREAL.

THE U.S. HAS LITTLE DIRECT INFLUENCE OVER NORTH KOREA. IN ADDITION TO THE STEPS WE ANNOUNCED IN JANUARY IN LISTING NORTH KOREA UNDER SEC. 6 (J) OF THE EXPORT ADMINISTRATION ACT AS A COUNTRY WHICH HAS REPEATEDLY SUPPORTED ACTS OF INTERNATIONAL TERRORISM, NORTH KOREA ALREADY WAS SUBJECT TO A TRADE BOYCOTT UNDER THE "TRADING WITH THE ENEMY ACT." WE WILL BE CONTINUING OUR EFFORTS WITH NATIONS THAT HAVE TIES WITH THE DPRK, INCLUDING THE SOVIET UNION AND THE PRC, TO DISSUADE THE DPRK FROM PURSUING TERRORISM AS AN INSTRUMENT OF ITS FOREIGN POLICY.

#### COUNTERING STATE SUPPORT

THE U.S. EFFORT AGAINST NORTH KOREA IS AN EXAMPLE OF HOW WE NEED AND USE A VARIETY OF OPTIONS TO DEAL WITH STATE TERRORISM. THESE OPTIONS INCLUDE POLITICAL AND DIPLOMATIC PRESSURES, BILATERAL AND MULTILATERAL, ECONOMIC, AND -- WHEN APPROPRIATE -- MILITARY.

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THERE ARE SITUATIONS IN WHICH WE HAVE MADE HEAVY USE OF ECONOMIC SANCTIONS, FOR EXAMPLE LIBYA. WE TOOK STEPS AGAINST THE QADHAFI REGIME IN THE 1970'S, INCLUDING THE IMPOUNDING OF C-130 AIRCRAFT PURCHASED BY LIBYA. LIBYA WAS ONE OF THE FIRST COUNTRIES DESIGNATED UNDER THE EXPORT ADMINISTRATION ACT OF 1979 AS A COUNTRY WHICH REPEATEDLY SUPPORTED ACTS OF INTERNATIONAL TERRORISM. INDEED ONE OF THE CATALYSTS FOR THE EAA'S SECTION 6 ANTI-TERRORISM SECTION WAS LIBYA'S ATTEMPTS TO BUY 400 HEAVY DUTY TRUCKS FROM THE U.S., OSTENSIBLY FOR MOVING OIL RIGS BUT ACTUALLY FOR TRANSPORTING TANKS. IN SUBSEQUENT YEARS, THE U.S. CONTINUED TO USE AND TIGHTEN UP ITS ECONOMIC PRESSURES AGAINST LIBYA. BUT THE IMPACT WAS LIMITED BECAUSE OTHER WESTERN COUNTRIES WERE RELUCTANT TO JOIN IN STEPS AGAINST LIBYA. THIS RELUCTANCE LESSENER, HOWEVER, IN APRIL 1986, AFTER THE DISCOVERY OF LIBYAN CULPABILITY IN THE BOMBING OF A WEST BERLIN DISCO WHICH KILLED TWO AMERICAN SOLDIERS, A TURKISH WOMAN AND WOUNDED OVER 200 PERSONS.

IT WAS ONLY AFTER THE U.S. DECIDED IT HAD TO TAKE STRONGER MEASURES, INCLUDING THE AIR STRIKE AGAINST LIBYA, THAT THE EUROPEAN COMMON MARKET COUNTRIES FINALLY JOINED IN ECONOMIC SANCTIONS, INCLUDING IN THEIR STATEMENT A DECLARATION AGAINST ANY NEW ARMS SALES. THE WESTERN EUROPEAN COUNTRIES ALSO TOOK SIGNIFICANT STEPS IN THE SECURITY AREA, PRIMARILY REDUCING LIBYA'S OPERATING BASES IN WESTERN EUROPE, THE SO-CALLED LIBYAN PEOPLES' BUREAUS. BY

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EXPELLING MORE THAN 100 SO-CALLED DIPLOMATS AND BUSINESSMEN. THESE STEPS, ALONG WITH THE SHOCK OF THE MILITARY STRIKE HELPED MAKE QADHAFI REALIZE HE COULD NOT CONDUCT TERRORISM ON A COST-FREE BASIS. OVER THE LONG TERM, MULTILATERAL PRESSURE AGAINST QADHAFI WILL BE DIFFICULT TO SUSTAIN DESPITE THE SHORT-TERM SUCCESS WE ENJOYED IN 1986 AND 1987.

IN THE CASE OF SYRIA IN 1986, THE POLITICAL AND DIPLOMATIC PRESSURES, INCLUDING THE BREAKING OF DIPLOMATIC RELATIONS BY THE U.K. AND THE WITHDRAWAL OF AMBASSADORS BY THE U.S. AND SOME E.C. COUNTRIES, WERE A MAJOR ELEMENT IN THE EFFORT TO DETER SYRIA FROM FUTURE TERRORISM.

IN MANY CASES, THE TRADE TIES BETWEEN THE WESTERN WORLD AND COUNTRIES SUPPORTING TERRORISM ALREADY ARE LIMITED. FOR EXAMPLE, MOST OF NORTH KOREA'S AND SYRIA'S TECHNOLOGY COMES FROM THE SOVIET BLOC, THUS IT IS MORE DIFFICULT FOR US TO EFFECTIVELY BRING TO BEAR SUCH ECONOMIC PRESSURES AS RESTRICTING SALES OF EQUIPMENT AND SPARE PARTS.

IN SHORT, THE CIRCUMSTANCES VARY FROM COUNTRY TO COUNTRY -- WHAT MIGHT BE EFFECTIVE WITH ONE IS NOT NECESSARILY EFFECTIVE WITH ANOTHER. THE GOAL OF OUR POLICY IS TO BE EFFECTIVE. TO BE EFFECTIVE WE NEED TO PRESERVE THE FLEXIBILITY TO PICK THE BEST

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MIXTURE OF OPTIONS FOR THE PARTICULAR CIRCUMSTANCES AND TO HAVE THE MAXIMUM POSSIBLE EFFECT. WE ALSO NEED THE OPTION OF BEING ABLE TO EMPLOY THE SANCTIONS IN PHASES, TO RATCHET THEM UPWARD OR DOWNWARD AS CIRCUMSTANCES DICTATE RATHER THAN SHOOT ALL OUR RELATIVELY FEW ARROWS AT ONCE, LEAVING NOTHING IN RESERVE. EXISTING LEGISLATION BY AND LARGE PROVIDES THIS FLEXIBILITY.

H.R. 3651

TURNING TO THE ANTI-TERRORISM POLICY PROVISIONS OF HR 3651, THE STATE DEPARTMENT FULLY SUPPORTS THE STATED PURPOSE OF THE BILL: STRENGTHENING OUR FIGHT AGAINST TERRORISM GENERALLY AND, MORE SPECIFICALLY, STATE-SUPPORTED TERRORISM. OUR CURRENT POLICY STRONGLY SEEKS TO DETER COUNTRIES FROM SUPPORTING TERRORISM. IT IS IMPORTANT TO MAKE CLEAR THAT COUNTRIES WHICH REPEATEDLY SUPPORT INTERNATIONAL TERRORISM SHOULD NOT ENJOY THE BENEFITS OF NORMAL RELATIONSHIPS OR BUSINESS WITH OTHERS IN THE INTERNATIONAL COMMUNITY.

WE ALSO SEEK TO FOCUS ON THE MOST EFFECTIVE WAYS TO TRY TO DETER COUNTRIES FROM SUPPORTING TERRORISM. TO DO THIS, IT IS NECESSARY THAT IN THE ACTUAL IMPLEMENTATION OF OUR POLICY, THE EXECUTIVE BRANCH BE ABLE TO TARGET ITS MEASURES AGAINST INDIVIDUAL COUNTRIES AND SPECIFIC SITUATIONS. AFTER CLOSELY EXAMINING H.R.

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3651 AS INTRODUCED. WE HAVE CONCLUDED, HOWEVER, THAT IT PRESENTS A NUMBER OF SERIOUS CONCERNS, AND THE ADMINISTRATION CANNOT ACCEPT THE BILL AS DRAFTED.

A MAJOR FEATURE OF THE H.R 3651 IS THE STANDARDIZATION OF THE CRITERIA FOR DESIGNATING WHETHER A COUNTRY SUPPORTS INTERNATIONAL TERRORISM AND THUS SHOULD BE SUBJECT TO SANCTIONS. THESE STANDARDIZED CRITERIA WOULD BE INCORPORATED IN THE ARMS EXPORT CONTROL ACT, THE EXPORT ADMINISTRATION ACT'S SECTION 6(J), AND THE FOREIGN ASSISTANCE ACT.

H.R. 3651'S TWO CRITERIA FOR IDENTIFYING TERRORISM-SUPPORTING COUNTRIES ARE

" . . . ANY COUNTRY WHOSE GOVERNMENT THE SECRETARY OF STATE DETERMINES --

(1) GRANTS SANCTUARY FROM PROSECUTION TO ANY INDIVIDUAL OR GROUP WHICH HAS COMMITTED AN ACT OF INTERNATIONAL TERRORISM; OR

(2) HAS REPEATEDLY PROVIDED SUPPORT FOR ACTS OF INTERNATIONAL TERRORISM.

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THE FIRST STANDARD, "SANCTUARY FROM PROSECUTION", ORIGINATED IN THE FOREIGN ASSISTANCE ACT AND THE SECOND, "REPEATEDLY PROVIDED SUPPORT FOR ACTS OF INTERNATIONAL TERRORISM", COMES FROM THE EXPORT ADMINISTRATION ACT. WE SUPPORT THE DRAFTERS' DESIRE TO CONSOLIDATE AND STANDARDIZE THE CRITERIA FOR DETERMINING WHETHER A COUNTRY IS A STATE-SUPPORTER OF TERRORISM. WE HAVE PROBLEMS HOWEVER WITH THE COMBINED CONSOLIDATED STANDARD FOR DESIGNATING A COUNTRY AS A SUPPORTER OF TERRORISM AND THE BROADER MANDATORY NATURE OF THE SANCTIONS THAT COULD FLOW FROM A FINDING ON A SOLE PROVISION OF SANCTUARY.

BY ESTABLISHING THE CONSOLIDATED CRITERIA THE BILL PROPOSES FOR PUTTING A COUNTRY ON THE TERRORISM LIST AND THEN SIMULTANEOUSLY MAKING MANDATORY THE MAJOR SANCTIONS WHICH FLOW FROM THAT ACTION, THE BILL WOULD RESTRICT FLEXIBILITY IN FASHIONING THE BEST MIX OF OPTIONS AND SANCTIONS TO DEAL WITH THE PARTICULAR TERRORIST-SUPPORTING STATE.

A BASIC PROBLEM LIES IN WHAT APPEARS TO BE A SIMPLE LIFTING OF THE "SANCTUARY FROM PROSECUTION" LANGUAGE WHICH WAS FIRST ADDED TO THE FOREIGN ASSISTANCE ACT IN THE MID-1970'S. SUCH A CUTOFF PROVISION ALREADY APPLIES TO SANCTIONS IN SEVERAL EXISTING LAWS: THE ARMS EXPORT CONTROL ACT, SEC. 3 (F), THE



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FOREIGN ASSISTANCE ACT, SEC. 620 (A), AND THE TRADE ACT OF 1974 SEC. 502 (B) WHICH WOULD IN EFFECT DENY DUTY-FREE STATUS. IT IS UNACCEPTABLE, HOWEVER, IF THE SANCTUARY PROVISION AS PROPOSED IN HR 6351 DIRECTLY OR INDIRECTLY WOULD THEN REQUIRE THE MANDATORY IMPOSITION OF AN ADDITIONAL TIER OF SANCTIONS KEYED TO A SEC. 6 (J) DETERMINATION WHICH MIGHT BE BETTER HELD IN RESERVE OR USED IN A MORE TARGETED MIXTURE OF PRESSURES AGAINST TERRORIST-SUPPORTING STATES.

I WOULD ALSO NOTE THAT THE STANDARD OF SANCTUARY FROM PROSECUTION HAS NEVER BEEN INVOKED BY THE U.S. GOVERNMENT. ITS MEANING IS SOMEWHAT VAGUE AND VERY BROAD. FOR EXAMPLE DOES THE PHRASE "SANCTUARY FROM PROSECUTION" MEAN THERE HAS TO BE A LEGAL PROCEEDING SUCH AS AN ARREST WARRANT PENDING AGAINST THE ALLEGED TERRORIST? IT IS ALSO NOT CLEAR WHETHER THIS APPLIES TO SANCTUARY FROM U.S. PROSECUTION OR COULD ALSO APPLY TO SANCTUARY FROM ANOTHER COUNTRY'S PROSECUTION.

WE BELIEVE THAT THE VAGUENESS PRESENTS SIGNIFICANT PROBLEMS. THEREFORE WE WOULD PREFER THAT THE EXISTING STANDARD "REPEATEDLY PROVIDED SUPPORT FOR ACTS OF INTERNATIONAL TERRORISM" BE MAINTAINED. BY USING THIS EXISTING SEC. 6 (J) STANDARD WE CAN -- AS WE ALREADY DO IN MAKING A DETERMINATION -- TAKE INTO CONSIDERATION THE SUPPORT FOR TERRORISM WHICH IS ENTAILED IN CASES OF PROVIDING SANCTUARY.

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THEREFORE, MR. CHAIRMAN, WE BELIEVE THIS IMPORTANT ASPECT OF THE BILL AS DRAFTED IS COUNTERPRODUCTIVE. WE WOULD BE GLAD TO WORK WITH THE COMMITTEE TO DEFINE A SINGLE CRITERION FOR ALL RELEVANT LEGISLATION BY WHICH THE SECRETARY OF STATE WOULD DESIGNATE A COUNTRY AS A SUPPOTER OF TERRORISM AND AGAINST WHICH A SELECTION OF MEASURES COULD BE APPLIED AT THE DISCRETION OF THE EXECUTIVE BRANCH.

#### RESCISSION

THE BILL'S PROPOSED PROVISION FOR REMOVING A COUNTRY FROM THE TERRORISM LIST (SEC. 4 (5)(A.)) ALSO IS UNACCEPTABLE AS DRAFTED.

THE BILL REQUIRES THE PRESIDENT TO NOTIFY CONGRESS 90 DAYS BEFORE THE PROPOSED RESCISSION THAT THE GOVERNMENT CONCERNED HAS NOT PROVIDED ANY SUPPORT FOR INTERNATIONAL TERRORISM OR GRANTED SANCTUARY DURING THE PRECEDING SIX-MONTH PERIOD AND THAT THE GOVERNMENT HAS GIVEN ASSURANCES THAT IT WILL NOT SUPPORT ACTS OF INTERNATIONAL TERRORISM IN THE FUTURE.

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THIS MEANS IT WOULD TAKE UP TO NINE MONTHS TO REMOVE A COUNTRY FROM THE TERRORISM LIST. IN ADDITION, CERTIFICATION AS TO WHETHER THE COUNTRY HAS "GRANTED SANCTUARY" RAISES THE PROBLEMS MENTIONED EARLIER AS TO THE VAGUENESS OF THIS STANDARD. WE UNDERSTAND THE HISTORY OF THE PREVIOUS LEGISLATION REQUIRING A "PROBATION" PERIOD BEFORE A GOVERNMENT COULD BE TAKEN OFF THE LIST IN NORMAL SITUATIONS. BUT WHAT IF THE GOVERNMENT CHANGES AND THE U.S. WANTS TO PROVIDE HEAVY DUTY TRUCKS OR OTHER DUAL USE EQUIPMENT IN HUMANITARIAN OR EMERGENCY ASSISTANCE? THE BILL SUGGESTS THAT THE GOVERNMENT OF THE DESIGNATED COUNTRY MIGHT HAVE TO BE IN OFFICE FOR THE FULL SIX-MONTH PERIOD, PLUS THE THREE MONTHS OF THE CONGRESSIONAL NOTIFICATION PERIOD, BEFORE ASSISTANCE COULD BE PROVIDED. THUS, THE PROPOSED REQUIREMENT MIGHT HINDER OUR ABILITY TO ASSIST A NEW GOVERNMENT THAT REPLACED A TERRORISM-SUPPORTING REGIME.

IN SUMMATION MR. CHAIRMAN, WE AGREE ON THE UNDERLYING GOALS OF THE ANTI-TERRORISM PROVISIONS OF THE BILL. HOWEVER AS DRAFTED IT PRESENTS MAJOR PROBLEMS REGARDING THE MOST EFFECTIVE IMPLEMENTATION OF THE ANTI-TERRORISM POLICY. WE APPRECIATE THIS COMMITTEE'S STRONG SUPPORT OF AND, INTEREST IN THE ANTI-TERRORISM EFFORT AND WE WOULD BE PREPARED TO CONTINUE TO WORK WITH YOU ON DEVELOPING A MORE EFFECTIVE WAY OF FURTHERING OUR MUTUAL ANTI-TERRORISM OBJECTIVES. THANK YOU.